

SENATE BILL 511

By Johnson

AN ACT to amend Tennessee Code Annotated, Title 29; Title 39, Chapter 17; Title 47, Chapter 18 and Title 65, Chapter 4, Part 4, relative to inaccurate identification information of telephonic and electronic communications.

WHEREAS, residents of this state are frequently bombarded with calls, texts, and faxes from seemingly trustworthy sources, including their own telephone or fax numbers, oftentimes in fraudulent attempts to solicit personal and private information; and

WHEREAS, it is imperative to establish safeguards against this practice, which is commonly known as "caller identification spoofing"; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding the following language as a new part:

**47-18-2301.** As used in this part:

(1) "Automatic number identification":

(A) Means a system that identifies the billing account for a call; and

(B) Includes an enhanced 911 service capability that enables the automatic display of the ten-digit number used to place a 911 call from a wire line, wireless, interconnected VoIP, or nontraditional telephone service;

(2) "Caller identification information" means information provided by a caller identification service regarding the telephone number, or other origination information, of a call or facsimile transmission made using a telecommunications service or an interconnected VoIP service, or of a text message sent using a text messaging service;

(3) "Caller identification service":

(A) Means any service or device designed to provide the user of the service or device with the telephone number, or other origination information, of a call or facsimile transmission made using a telecommunications service or an interconnected VoIP service, or of a text message sent using a text messaging service; and

(B) Includes automatic number identification services;

(4) "Interconnected VoIP service" means an interconnected voice over internet protocol service that:

(A) Enables real-time, two-way voice communications;

(B) Requires a broadband internet connection from the user's location;

(C) Requires Internet protocol-compatible customer premises equipment;

and

(D) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network;

(5) "Place of primary use" means the street address where a subscriber's use of a telecommunications service or interconnected VoIP service primarily occurs, which shall be:

(A) The residential street address or the primary business street address of the subscriber or, in the case of a subscriber of interconnected VoIP service, the subscriber's registered location; and

(B) Within the licensed service area of the provider;

(6) "Provider" means a person or entity that offers telecommunications service or interconnected VoIP service;

(7) "Registered location" means the most recent information obtained by an interconnected VoIP service provider that identifies the physical location of an end user;

(8) "Subscriber" means a person:

(A) Who subscribes to a caller identification service in connection with a telecommunications service or an interconnected VoIP service; and

(B) Whose place of primary use for the service described in subdivision (8)(A) is located in this state;

(9) "Telecommunications service" means the offering of telecommunications for a fee directly to the public, or to classes of users so as to be effectively available directly to the public, regardless of the facilities used;

(10) "Text message":

(A) Means a real-time or near real-time message consisting of text, images, sounds, or other information that is transmitted from or received by a device that is identified as the transmitting or receiving device by means of a telephone number;

(B) Includes a short message service (SMS) message, an enhanced message service (EMS) message, and a multimedia message service (MMS) message; and

(C) Does not include a real-time, two-way voice or video communication; and

(11) "Text messaging service" means a service that permits the transmission or receipt of a text message, including a service provided as part of or in connection with a telecommunications service or an interconnected VoIP service.

**47-18-2302.**

(a) Except as provided in § 47-18-2303, it is an offense for a person, in connection with a telecommunications service or an interconnected VoIP service, to knowingly cause any caller identification service to transmit misleading or inaccurate

caller identification information to a subscriber with the intent to defraud or cause harm to another person or to wrongfully obtain anything of value.

(b) A violation of subsection (a) is a Class A misdemeanor.

(c) Nothing in this section prohibits:

(1) Criminal prosecution under any other law;

(2) A civil action brought by the attorney general and reporter pursuant to § 47-18-2304; or

(3) A civil action brought by an aggrieved person pursuant to § 47-18-2305.

(d) The transmission of misleading or inaccurate caller identification information to a subscriber is an element of the offense under subsection (a) and occurs where the subscriber's place of primary use for the caller identification service is located.

(e) Pursuant to § 39-11-103 and subsection (d), if a subscriber's place of primary use for the caller identification service is located in this state, an essential element of the offense under subsection (a) is committed in this state and a defendant is subject to prosecution in this state, regardless of whether the defendant was actually physically present in this state when the offense occurred.

(f) Venue for the offense under subsection (a) shall be in any county where an essential element of the offense was committed, regardless of whether the defendant was actually physically present in the county when the offense occurred.

**47-18-2303.** This part does not prohibit or restrict any of the following:

(1) Subject to § 65-4-403, blocking the capability of a caller identification service to transmit caller identification information;

(2) Any authorized law enforcement activity;

(3) Any lawfully authorized investigative, protective, or intelligence activity of:

- (A) The United States or an intelligence agency of the United States;
  - (B) This state or any political subdivision of this state; or
  - (C) Any other state or a political subdivision of that state;
- (4) A court order that specifically authorizes the use of caller identification manipulation; or
- (5) The right of the attorney general and reporter to bring a civil action under 47 U.S.C. § 227(e)(6) to enforce the federal Truth in Caller ID Act of 2009 (47 U.S.C. § 227).

**47-18-2304.**

(a) The attorney general and reporter may bring an action against a person who violates § 47-18-2302(a) to enjoin further violations and to recover a civil penalty of up to ten thousand dollars (\$10,000) per violation.

(b)

(1) Any civil penalty collected pursuant to this section shall be paid into the general fund of the state.

(2) The prevailing party is entitled to reasonable attorney's fees, court costs, and expenses; provided, that no court costs shall be taxed against the attorney general and reporter or this state in actions commenced under this section.

(c) Jurisdiction for an action brought pursuant to this section shall be in the chancery or circuit court of Davidson County.

**47-18-2305.**

(a) Except as provided in subsection (d), any person who is aggrieved by a violation of § 47-18-2302(a) may bring an action to enjoin further violations and for the recovery of the person's actual damages and actual expenses incurred, including court

costs and attorney's fees, against any person who is responsible for or knowingly participated in the violation. The injunctive relief available under this subsection (a) is in addition to any damages to which a person may be entitled.

(b) If the court finds that the violation of § 47-18-2302(a) was an intentional violation, or that the defendant has engaged in a pattern and practice of violations, the court may award three (3) times the actual damages sustained.

(c) The action may be brought in the chancery or circuit court of Davidson County or in a court of competent jurisdiction where the alleged violation of § 47-18-2302(a) took place.

(d) A person does not have a cause of action against a provider for a violation of § 47-18-2302(a) unless the violation resulted from the provider's gross negligence or intentional wrongdoing.

SECTION 2. Tennessee Code Annotated, Section 47-18-5203, is amended by deleting the word "offenses" in subsection (d) and substituting instead the word "violations".

SECTION 3. Tennessee Code Annotated, Section 47-18-5203, is further amended by adding the following as a new subsection:

(e) In addition to the penalties set forth in § 47-18-5205, a person who knowingly violates:

- (1) Subsection (a), (b), or (c) commits a Class A misdemeanor; or
- (2) Subsection (d) commits a Class B misdemeanor.

SECTION 4. This act shall take effect July 1, 2017, the public welfare requiring it, and shall apply to prohibited conduct occurring on or after that date.